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Supreme Court, U.S.
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(134-D)

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1726

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Petitioner,

against

GEORGE K. WYMAN, Individually and as Commissioner of the Department of Social Services of the State of New York, and GEORGE BUGNACKI, EARL M. AUSLANDER, THOMAS GENTILE, etc.,
Respondents,

JOHN L. LASCARIS, Commissioner of the Department of Social Services of Onondaga County, New York,
Appellant-Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

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Appellant-Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

Statement of the Case

This petition arises from the order of the Court of Appeals of the State of New York in an action for a declaratory judgment instituted by John L. Lascaris, Com-

missioner of the Department of Social Services of Onondaga County, New York, against George K. Wyman, Commissioner of the Department of Social Services of the State of New York. The plaintiff in the action, Commissioner Lascaris, sought a judgment declaring that section 131 of the Social Services Law of New York, as amended in 1971, precluded the payment of welfare benefits to strikers. The New York Court of Appeals affirmed the order of the New York Appellate Division of the Supreme Court, Fourth Judicial Department, which reversed a judgment of the New York Supreme Court, Onondaga County, and declared that welfare benefits were available to persons engaging in a strike against their employer.

In July of 1971, employees of the New York Telephone Company, represented by several locals of the Communication Workers of America in New York State, went out on strike. Shortly thereafter applications were made by several strikers in Onondaga County for welfare benefits. Commissioner Lascaris denied the applications on the ground that strikers were ineligible for public assistance under the terms of Social Services Law, § 131 as amended, contrary to a position held by the State Commissioner of Social Services, and instituted this action against the State Commissioner for a declaratory judgment that strikers were not eligible for welfare payments. After the action was commenced, three strikers, acting individually and on behalf of others similarly situated, were permitted to intervene as defendants. Judgment was rendered by the New York State Supreme Court, Onondaga County in favor of the plaintiff Lascaris, declaring that strikers were ineligible for public assistance under New York State Law.

That judgment was appealed by the defendants to the Appellate Division of the Supreme Court for the Fourth Judicial Department. At that point, the Chamber of Commerce of the United States of America, petitioner in this application (hereafter "the Chamber") sought leave to intervene as a party in support of the positions of plaintiff-respondent Lascaris. The Appellate Division denied the motion to intervene, but granted permission to the Chamber to file a brief as *amicus curiae*.

The Appellate Division reversed the judgment of the State Supreme Court and the plaintiff Commissioner appealed to the Court of Appeals. Again, the Chamber moved for permission to intervene in support of the appellant. Permission was again denied, and the Chamber filed a brief *amicus curiae*. When the Court of Appeals affirmed the order of the Appellate Division, Commissioner Lascaris did not seek any further appeal. The Chamber however moved for reargument and permission to intervene upon reargument. The motion was denied. Undaunted, the Chamber again moved the Court of Appeals to vacate its prior order denying reargument and intervention, and that motion was similarly denied. The instant petition for certiorari by the Chamber followed.

Opinions Below

The opinion of the New York Court of Appeals (31 N Y 2d 386) and of the Appellate Division, Fourth Department (8 A D 2d 163) deal with the substance of plaintiff's action and not with petitioner's application to intervene. They are set forth as Appendix "A" and Appendix "F", respectively, annexed to the Petition. Petitioner's several motions for intervention and reargument were denied without opinion.

Question Presented

Did the petitioner have such a substantial direct interest in the subject matter of the underlying action as to entitle it to intervene as a matter of right, or to make the several denials of its application to intervene an abuse of discretion by the State Courts?

Reasons for Denying Certiorari

The provisions of §§ 1012 and 1013 of the New York Civil Practice Law and Rules, governing intervention in an action as of right and by permission, respectively, are substantially similar to the provisions of Rule 24 of the Federal Rules of Civil Procedure. In fact, those sections were consciously patterned after the Federal Rule (*cf. Matter of Petroleum Research Fund*, 3 New York A D 2d 1 [Appellate Division, Fourth Department, 1956], Weinstein, Korn, Miller, *New York Civil Practice*, Vol. 2, § 1012.01) and accordingly, Federal and New York State decisions may be applied to the question here with equal validity.

That the petitioner would have no "right" to intervene, either under CPLR § 1012 or Federal Rule 24, seems clear: there is no right existing by virtue of any other statute (*cf. Brotherhood of Railroad Trainmen* v. *B. & O. Railroad Co.*, 331 U. S. 519 [1946]) and petitioner claims none. Nor can it be claimed reasonably that petitioner has an interest "relating to the property or transaction which is the subject of the action" and that such interest is not adequately represented by the existing parties (Federal Rules of Civ. Procedure, Rule 24 [a]). What is required here is a "direct, substantial, legally protectable interest

in the proceedings" (*Hobson* v. *Hansen*, 44 F. R. D. 18, 24 [D. D. C. 1968]; *Diaz* v. *Southern Drilling Corp.*, 427 F 2d 1118 [5th Cir., 1970], cert. den. 400 U. S. 878)—a "significantly protectable interest" (*Donaldson* v. *U. S.*, 400 U. S. 517 [1971]). In addition, the claimed interest must be relevant to the issues in controversy. (*Norwalk CORE* v. *Norwalk Board of Education*, 298 F. Supp. 208 [D. Connecticut 1968]).

The interest asserted by the petitioner here is not an interest in property, nor is it a direct and substantial interest in the subject matter of the action. Petitioner, as a non-profit association, has no direct interest in the controversy—it is not seeking to intervene as a taxpayer in New York State, and cannot thus be aggreived by the policies or practices of welfare administration in the State. Nor, for that matter, has it sought to intervene as an employer in this State, having a direct interest in the settlement of labor disputes. In any event, the interest which petitioner does assert—that the payment of public assistance to strikers promotes and prolongs labor disputes—is totally irrelevant to the subject matter of this declaratory judgment action. The sole issue in the action in the New York courts was the eligibility of strikers, as "employable" persons, for public welfare under New York Social Services Law, § 131. While the Chamber is disappointed in the outcome of this action, we submit that a mere interest in the success of one of the parties does not constitute a legally protectable interest. Accordingly petitioner does not meet any of the requirements for intervention as of right. (*Sam Fox Publishing Co.* v. *United States*, 366 U. S. 683 [1961]; *Blocker* v. *Board of Education of Manhasset*, N. Y., 229 F. Supp. 714 [Dist. Ct. E. D. N. Y.

1964]; *Hobson* v. *Hansen, supra; Simadiris* v. *Hotel Waldorf Astoria,* 281 App. Div. [N. Y.] 665 [1st Dept., 1952]; *United Baking Co.* v. *Bakery & Confectionary Workers Union,* 257 App. Div. [N. Y.] 665 [3d Dept., 1939]).

While the denial of intervention sought as a matter of right is appealable as of right, intervention by permission is a matter of discretion and denial of permission is appealable only to the extent that such denial constitutes an abuse of discretion (*Sam Fox Publishing Co.* v. *United States, supra*). In the present case, denial of permission to petitioner to intervene was properly and reasonably exercised. Petitioner obviously had no interest in the merits of the controversy, except that a judgment in favor of plaintiff would suit the ends of petitioner and its members. The reasons upon which petitioner appealed to the Courts' discretion—that the payment of welfare benefits to strikers encouraged and prolonged labor disputes—was clearly extraneous to the issue which plaintiff was sincerely and vigorously litigating in the public interest. There was no "common question of law or fact" in the issue raised by plaintiff and that sought to be raised by petitioner.

Accordingly, we submit, denial of permission to intervene under the circumstances was a proper and reasonable exercise of discretion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 9, 1973.

Respectfully submitted,

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